

Tuesday, September 23, 2014

The Board met at its offices at 450 N Street, Sacramento, at 10:58 a.m., with Mr. Horton, Chairman, Ms. Steel, Vice Chairwoman, Ms. Yee and Mr. Runner present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING

Paula Trust, 759422

2007, \$150,655.00 Claim for Refund

For Appellant:

Sam Doolittle, Representative

Amy L. Silverstein, Attorney

Edwin P. Antolin, Attorney

Andrew McCullough, Attorney

For Franchise Tax Board:

Sonia Woodruff, Tax Counsel

Doug Powers, Tax Counsel

Natasha Page, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellant Paula Trust was subject to California income tax on all of its income as California source income, as contended by respondent Franchise Tax Board, or, alternatively, whether appellant's amended return correctly apportioned 50 percent of its income to California on the basis that only one of its two fiduciaries was a California resident.

Appellant's Exhibit: PowerPoint ([Exhibit 9.1](#))

Action: Upon motion of Ms. Yee, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Exhibits to these minutes are incorporated by reference.

The Board recessed at 12:48 p.m. and reconvened at 1:37 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

PUBLIC COMMENT

Speaker: William M. Connell, Military Veteran, American Legion Post 49, owner of All American Surf Dog

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING

Denny L. Lira, 764604

2011, \$1,429.00 Assessment

For Appellant:

Denny L. Lira, Taxpayer

Jaime Lara, Witness

For Franchise Tax Board:

Samantha Nguyen, Tax Counsel

Diane Ewing, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellant is entitled to the head of household (HOH) filing status for the 2011 tax year.

Respondent's Exhibit: Miscellaneous Documents ([Exhibit 9.2](#))

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Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board submitted the appeal for decision.

SALES AND USE TAX APPEALS HEARINGS**Penryn Lumber Company, 554162 (KH)**

10/01/06 to 09/30/09, \$45,528.82 Tax

For Petitioner:

Dale Martell, Taxpayer

Matthew F. Heinrich, Representative

For Sales and Use Tax Department:

Cary Huxsoll, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether adjustments are warranted to the measure of disallowed claimed nontaxable sales for resale.

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Robert Gage Lesnett Revocable Trust, 625811 (UT)

04/21/10, \$7,995.00 Tax

For Petitioner:

Robert G. Lesnett, Taxpayer

For Sales and Use Tax Department:

Kevin Smith, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner owes use tax on its purchase and subsequent use of the vessel.
Whether petitioner's failure to report and pay the tax was the result of its reliance on erroneous written advice from the Board.

Action: Upon motion of Ms. Yee, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

SPECIAL TAXES APPEALS HEARING**Mox, Inc., 569235 (STF)**

01/01/06 to 02/28/06, \$382,591.73 Tax, \$95,647.93 Fraud Penalty

Mox, Inc., 570251 (SFT)

05/01/04 to 12/31/05, \$2,389,056.31 Tax, \$597,264.09 Fraud Penalty

For Taxpayer:

Betty Williams, Attorney

Todd Luoma, Attorney

For Property and Special Taxes Department: Pamela Mash, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether taxpayer is liable for tax on its distributions of tobacco products in California.

Whether ISOD has provided clear and convincing evidence of fraud.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

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LEGAL APPEALS MATTERS, CONSENT

The Board deferred consideration of the following matters: *Adnan Y. Daher and Marlane B. Daher, 611328, Adnan Y. Daher and Marlane B. Daher, 611326; Adnan Y. Daher and Marlane B. Daher, 611324; Rashid & Sons, Inc., 533211, Three Four R, Inc., 532577, RD 786 Enterprises, Inc., 533217; and, Z & R Oil Corporation, 532457.*

With respect to the Legal Appeals Matters Consent Agenda, upon a single motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board made the following orders:

Airmonterey, LLC, 554600 (UT)

03/04/09, \$17,039.00 Tax

Action: Redetermine as recommended by the Appeals Division.

Adnan Y. Daher and Marlane B. Daher, 611328 (BH)

10/01/08 to 09/30/10, \$9,340.86 Tax, \$997.24 Negligence Penalty

Adnan Y. Daher and Marlane B. Daher, 611326 (BH)

10/01/07 to 09/30/10, \$5,206.30 Tax, \$0.00 Penalty

Adnan Y. Daher and Marlane B. Daher, 611324 (BH)

07/01/07 to 09/30/10, \$9,011.70 Tax, \$0.00 Penalty

Action: The Board took no action.

S. Peterson Enterprises, Inc., 597516, 597517 (AR)

07/01/03 to 06/30/06, \$106,899.10 Tax, \$713.90 Failure-to-File Penalty, \$9,976.01 Negligence Penalty

07/01/07 to 06/30/11, \$64,323.01 Tax, \$6,432.33 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Almokhtar Hussein Alfareh, 784927 (STF)

September 9, 2013 Seizure Date, \$71.25 Approximate Value

Action: Determined that staff properly seized the tobacco products.

George Murrah and Feddah Daoud, 790418 (STF)

October 29, 2013 Seizure Date, \$2,570.07 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Yolanda Sahagun, 792727 (STF)

September 24, 2013 Seizure Date, \$791.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Khattar A. Tohme, 791350 (STF)

November 7, 2013 Seizure Date, \$545.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Mohammad Khalid, 559974, 721406 (DF)

01/01/07 to 12/31/09, \$65,115.35 Tax, \$6,511.55 Negligence Penalty

Action: Grant the petition for rehearing as recommended by the Appeals Division.

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Rashid & Sons, Inc., 533211 (AS)
01/01/07 to 12/31/09, \$212,183.87 Tax, \$21,218.43 Negligence Penalty
Three Four R, Inc., 532577 (AS)
01/01/07 to 12/31/09, \$188,649.41 Tax, \$18,864.96 Negligence Penalty
RD 786 Enterprises, Inc., 533217(AS)
01/01/07 to 12/31/09, \$115,127.55 Tax, \$11,512.75 Negligence Penalty
Z & R Oil Corporation, 532457 (AS)
01/01/07 to 12/31/09, \$365,725.11 Tax, \$36,572.56 Negligence Penalty
Action: The Board took no action.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board made the following orders:

Nicholas Anthony Czuczko, 621011
2005, \$12,535.00 Tax, \$2,507.00 Accuracy-Related Penalty
2006, \$330,110.00 Tax, \$66,022.00 Accuracy-Related Penalty
Action: Sustain the action of the Franchise Tax Board.

Elizabeth Johnson, 757564
2011, \$479.00 Assessment
Action: Sustain the action of the Franchise Tax Board.

Ace Ventures, LLC, 725833
2011, \$2,258.00 Claim for Refund
Action: Sustain the action of the Franchise Tax Board.

David John Adlington, 663736
2009, \$767.00 Tax, \$191.75 Failure to Furnish Information Penalty
2010, \$1,304.00 Tax
Action: Modify the action of the Franchise Tax Board.

William S. Ayres, 628390
2007, \$2,739.00 Tax
Action: Sustain the action of the Franchise Tax Board.

Shih Jung Bai and Claudia Y. Bai, 717459
2008, \$2,794.00 Tax
Action: Sustain the action of the Franchise Tax Board as modified by its concessions.

Bayczech, LLC, 722046
2009, \$316.26 Claim for Refund
Action: Sustain the action of the Franchise Tax Board.

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Paul Betz and Amy Betz, 733123

2007, \$10,825.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

D. Maurice Carmon, 733280

2006, \$4,182.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

William L. Chapin, 732938

2001, \$679.00 Tax, \$135.80 Accuracy-Related Penalty, \$68.11 Post-Amnesty Penalty

2002, \$1,471.00 Tax, \$294.20 Accuracy-Related Penalty, \$85.56 Post-Amnesty Penalty

Action: Sustain the action of the Franchise Tax Board as modified by its concessions.

Carolyn L. Chiappino, 725819

1999, \$2,407.69 Assessment

Action: Sustain the action of the Franchise Tax Board.

Christina Choi, 712953

2010, \$1,305.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Kambiz Dianatkah, 732681

2008, \$1,730.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Jason L. Diaz and Sherri A. Diaz, 739067

2009, \$334.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Gary P. Dubois, 743473

2008, \$34,277.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Ray Exley, 738670

2007, \$4,554.00 Tax

Action: Modify the action of the Franchise Tax Board.

Christy Foley and Patrick Foley, 728000

2011, \$432.24 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Samuel W. Fordyce and Sally G. Fordyce, 731247

2008, \$6,471.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Shin Ham J. Fu and Shu Chu Fu, 609646

2006, \$4,592.00 Assessment

Action: Sustain the action of the Franchise Tax Board as modified by its concessions on appeal.

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Charles K. Gifford, Jr. and Elizabeth P. Gifford, 743474

2011, \$21,248.35 Claim for Refund, \$17,065.56 Late Payment Penalty, \$226.62 Electronic Payment Penalty

Action: Sustain the action of the Franchise Tax Board as modified by its concessions on appeal.

Daxius Gregory, 740006

2009, \$512.00 Tax, \$128.00 Late Filing Penalty

Action: Sustain the action of the Franchise Tax Board and impose a \$2,500.00 frivolous appeal penalty.

Wolfgang Haerle and Cornelia Haerle, 589266

1997, \$25,418.00 Tax, \$6,354.50 Late Filing Penalty, \$9,884.16 Post-Amnesty Penalty

Action: Sustain the action of the Franchise Tax Board.

Michael Hernandez, 717026

2005, \$57,547.00 Tax, \$11,509.40 Accuracy-Related Penalty

2006, \$107,751.00 Tax, \$21,550.00 Accuracy-Related Penalty

Action: Sustain the action of the Franchise Tax Board.

Wood R. Hill and Dena M. Hill, 742683

2009, \$2,857.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Martin Horcasitas, 678063

2008, \$663.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Fletcher H. Hyler, 608068

1993, \$13,585.00 Tax, \$2,717.00 Accuracy-Related Penalty

Action: Sustain the action of the Franchise Tax Board.

Eugene Kohl and Mary Lou Kohl, 626152

2008, \$333.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Geneal Majors, 741233

1995, \$9,193.72 Tax

Action: Sustain the action of the Franchise Tax Board.

James A. Morgan and Mary Alice Morgan, 724155

2009, \$3,655.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Daniel Rivas, 782692

2011, \$362.77 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

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Veronica Rogers (Chormicle) and Michael Chormicle, 574411

2002, \$15,969.00 Assessment

Action: Dismiss for lack of jurisdiction.

Segall Geophysical Services, LLC, 738606

2007, Claim for Refund \$200.00 Late Payment Penalty, \$50.00 Late Filing Penalty

2008, Claim for Refund \$200.00 Late Payment Penalty, \$50.00 Late Filing Penalty

2009, Claim for Refund \$800.00 LLC Tax, \$172.00 Late Payment Penalty, \$50 Late Filing Penalty

Action: Sustain the action of the Franchise Tax Board as modified by its concessions on appeal.

Xiaoyu Sun, 716472

2008, \$1,685.00 Tax

Action: Sustain the action of the Franchise Tax Board as modified by its concessions.

Charles Updegrove, 756086

2008, \$2,302.00 Assessment

Action: Sustain the action of the Franchise Tax Board as modified by its concessions on appeal.

Eugene Vollucci and Barbara Vollucci, 595337

2005, \$5,690.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Pauline E. Wallner, 727531

2008, \$110.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

William H. Gietter Trust B, 594611

2008, \$2,286.34 Claim for Refund,

Action: Sustain the action of the Franchise Tax Board.

James A. Wittling and Angela Wittling, 719027

2008, \$910.25 Tax

Action: Sustain the action of the Franchise Tax Board.

Irving P. Zuckerman and Christine S. Zuckerman, 741825

2011, \$1,037.07 Claim for Refund

Action: Sustain the action of the Franchise Tax Board as modified by its concessions.

George Mak, 610342

2007, \$12,639.00 Assessment

Action: Deny the petition for rehearing.

David R. Mills, 715376

2007, \$6,035.00 Assessment

Action: Deny the petition for rehearing.

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Glen Steward and Jill Steward, 631064
2006, \$101,471.00 Assessment, \$43,715.95 Penalties
Gregory Bischoff and Bonita Bischoff, 635970
2006, \$78,311.00 Assessment, \$29,631.00 Penalties
Action: Deny the petition for rehearing.

**SALES AND USE TAX MATTERS, REDETERMINATIONS, RELIEF OF PENALTIES,
DENIALS OF CLAIMS FOR REFUND, AND, GRANT-ONE DAY INTEREST RELIEF,
CONSENT**

With respect to the Sales and Use Tax Matters, Redeterminations, Relief of Penalties, Denials of Claims for Refund, and, Grant-One Day Interest Relief, Consent Agenda, upon a single motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 87105 in *Cemex Construction Materials Pacific, LLC, 816213*, the Board made the following orders:

Hoshizaki America, Inc., 734257 (OH)
07/01/08 to 06/30/11, \$183,788.00
Action: Approve the redetermination as recommended by staff.

Michael P. Layman, 658127 (EH)
07/01/08 to 12/31/08, \$182,589.40
Action: Approve the redetermination as recommended by staff.

Dwight C. Esnard, 658125 (EH)
07/01/08 to 12/31/08, \$182,589.40
Action: Approve the redetermination as recommended by staff.

Novitex Enterprise Solutions, Inc., 743694 (OH)
01/01/07 to 12/31/09, \$332,458.69
Action: Approve the redetermination as recommended by staff.

McDonnell Douglas Corporation, 496917 (OH)
01/01/02 to 12/31/05, \$15,462,380.73
Action: Approve the redetermination as recommended by staff.

World Wide Parts & Accessories Corp, 718126 (CH)
04/01/09 to 06/30/10, \$179,381.91
Action: Approve the redetermination as recommended by staff.

Ricoh Production Print Solutions, LLC, 611793 (OH)
06/01/07 to 06/30/09, \$645,684.92
Action: Approve the redetermination as recommended by staff.

Capital Dynamics US Solar-Procurement 1, LLC, 823083 (BH)
01/01/13 to 12/31/13, \$205,341.40
Action: Approve the relief of penalty as recommended by staff.

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Abener Teyma Mojave General Partnership, 814058 (OH)

01/01/13 to 12/31/13, \$1,344,784.10

Action: Approve the relief of penalty as recommended by staff.

Cig Financial, 482553 (EA)

07/01/08 to 06/30/09, \$331,224.85

Action: Approve the denial of claim for refund as recommended by staff.

S&S Seeds, Inc., 816212 (GH)

10/01/13 to 10/31/13, \$570.60

Action: Approve the one day interest relief as recommended by staff.

Creative Bus Sales, Inc., 823086 (EH)

01/01/13 to 03/31/13, \$1,452.00

Action: Approve the one day interest relief as recommended by staff.

The Bradbury Company, Inc., 816216 (OH)

01/01/12 to 12/31/12, \$739.14

Action: Approve the one day interest relief as recommended by staff.

Business Interiors Northwest, Inc., 814060 (OH)

02/01/14 to 02/28/14, \$673.37

Action: Approve the one day interest relief as recommended by staff.

Cemex Construction Materials Pacific, LLC, 816213 (OH)

10/01/13 to 12/31/13, \$10,212.61

Action: Approve the one day interest relief as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

JBK Enterprise Group, Inc., 814059 (DF)

10/01/13 to 12/31/13, \$81.28

Action: Approve the one day interest relief as recommended by staff.

Sonia Evelyn Santos, 816219 (CH)

01/01/14 to 03/31/14, \$19.23

Action: Approve the one day interest relief as recommended by staff.

Vermont Outlet, Inc., 823087 (AS)

01/01/14 to 01/31/14, \$72.53

Action: Approve the one day interest relief as recommended by staff.

Zep Vehicle Care, Inc., 823084 (OH)

01/01/14 to 01/31/14, \$385.55

Action: Approve the one day interest relief as recommended by staff.

Sonus-USA, Inc., 816218 (OH)

01/01/14 to 01/31/14, \$478.73

Action: Approve the one day interest relief as recommended by staff.

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CP Sales, LLC, 814061 (OH)

02/01/14 to 02/28/14, \$315.31

Action: Approve the one day interest relief as recommended by staff.

SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 87105 in *Citrix Systems, Inc.*, 594263, the Board made the following orders:

Benjarong, Inc., 814371 (EH)

07/01/10 to 06/30/13, \$566,116.73

Action: Approve the credit and cancellation as recommended by staff.

S.C. Johnson & Son, Inc., 772181 (JH)

01/01/13 to 06/30/13, \$127,879.00

Action: Approve the refund as recommended by staff.

Marble Systems Installation, Inc., 597555 (BH)

07/01/09 to 12/31/10, \$156,854.82

Action: Approve the refund as recommended by staff.

Fletcher Jones Motor Cars, Inc., 668913 (EA)

07/01/09 to 06/30/13, \$420,633.88

Action: Approve the refund as recommended by staff.

7-Eleven, Inc., 601929 (OH)

10/01/05 to 09/30/08, \$290,964.55

Action: Approve the refund as recommended by staff.

Professional Hospital Supply, Inc., 772603 (EH)

07/01/10 to 06/30/13, \$158,927.00

Action: Approve the refund as recommended by staff.

Bank of the West, 719655 (CH)

10/01/10 to 06/30/13, \$3,882,478.46

Action: Approve the refund as recommended by staff.

Optical Coating Laboratory, Inc., 815747 (JH)

01/01/07 to 12/31/10, \$249,718.22

Action: Approve the refund as recommended by staff.

Century Theatres, Inc., 814038 (OH)

10/01/09 to 09/30/12, \$846,915.44

Action: Approve the refund as recommended by staff.

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The Boeing Company, 812759 (OH)

01/01/09 to 12/31/12, \$823,177.56

Action: Approve the refund as recommended by staff.

Miller Brewing Company, 799352 (EA)

01/01/07 to 07/31/08, \$376,198.69

Action: Approve the refund as recommended by staff.

Cinemark USA, Inc., 814042 (OH)

10/01/09 to 09/30/12, \$300,520.46

Action: Approve the refund as recommended by staff.

Howard Hughes Medical Institute, 609233 (OH)

07/01/07 to 12/31/12, \$3,220,246.16

Action: Approve the refund as recommended by staff.

BMW of North America, 822159 (OH)

7/24/13 to 02/04/14, \$2,718,764.47

Action: Approve the refund as recommended by staff.

Chrysler, LLC, 819045 (OH)

07/01/13 to 05/12/14, \$1,037,337.71

Action: Approve the refund as recommended by staff.

UPS Oasis Supply Corp., 628391 (OH)

04/01/12 to 06/30/12, \$145,653.37

Action: Approve the refund as recommended by staff.

Remec Microwave, Inc., 760066 (FH)

01/01/10 to 03/31/13, \$128,682.89

Action: Approve the refund as recommended by staff.

Berlin Packaging, LLC, 785271 (OH)

07/01/12 to 12/31/12, \$147,309.00

Action: Approve the refund as recommended by staff.

PGA Tour, Inc., 744433 (OH)

04/01/10 to 12/31/11, \$166,246.39

Action: Approve the refund as recommended by staff.

Niscayah, Inc., 773743 (CH)

07/01/08 to 12/31/09, \$767,980.82

Action: Approve the refund as recommended by staff.

Edison Material Supply, LLC, 770275 (EA)

10/01/13 to 12/31/13, \$10,697,026.04

Action: Approve the refund as recommended by staff.

Mobile Mini, LLC, 742808 (OH)

01/01/13 to 06/30/13, \$282,212.86

Action: Approve the refund as recommended by staff.

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Abaxis, Inc., 823049 (CH)

04/01/10 to 03/31/13, \$183,421.53

Action: Approve the refund as recommended by staff.

Citrix Systems, Inc., 594263 (OH)

07/01/08 to 09/30/11, \$231,030.25

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

Hitachi Data Systems Credit Corp., 774774 (GH)

10/01/12 to 12/31/12, \$248,652.21

Action: Approve the refund as recommended by staff.

Lobel Financial Corporation, 603823 (EA)

10/01/11 to 06/30/13, \$1,836,257.17

Action: Approve the refund as recommended by staff.

Lobel Financial Corporation, 785254 (EA)

07/01/13 to 12/31/13, \$701,088.00

Action: Approve the refund as recommended by staff.

IPC (USA), Inc., 711957 (EA)

07/01/12 to 12/31/12, \$1,647,200.13

Action: Approve the refund as recommended by staff.

United Auto Credit Corporation, 799340 (EA)

10/01/13 to 03/31/14, \$112,172.00

Action: Approve the refund as recommended by staff.

Scholastic Book Fairs, Inc., 627529 (OH)

10/01/10 to 06/30/12, \$951,949.76

Action: Approve the refund as recommended by staff.

Sysmex America, Inc., 738981 (OH)

10/01/12 to 12/31/12, \$286,287.71

Action: Approve the refund as recommended by staff.

Cig Financial, 482553 (EA)

07/01/08 to 06/30/09, \$141,922.92

Action: Approve the refund as recommended by staff.

Qualcomm Mems Technologies, Inc., 817506 (FH)

01/01/08 to 12/31/10, \$267,880.40

Action: Approve the refund as recommended by staff.

Williams Scotsman, Inc., 531532 (OH)

01/01/07 to 12/31/10, \$2,197,200.81

Action: Approve the refund as recommended by staff.

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Clearedge Power, Inc., 788455 (OH)

10/01/10 to 12/31/11, \$143,887.55

Action: Approve the refund as recommended by staff.

MC Sign, LLC, 624856 (OH)

04/01/09 to 03/31/12, \$241,332.06

Action: Approve the refund as recommended by staff.

Compumail Information Services, Inc., 814624 (CH)

01/01/05 to 12/31/09, \$334,635.95

Action: Approve the refund as recommended by staff.

West Coast University, Inc., 774771 (EA)

07/01/12 to 06/30/13, \$165,120.00

Action: Approve the refund as recommended by staff.

JX Nippon Oil & Energy Corp., 731956 (OH)

10/01/12 to 12/31/12, \$119,884.98

Action: Approve the refund as recommended by staff.

Western Federal Credit Union, 745218 (AS)

04/01/10 to 06/30/13, \$226,244.71

Action: Approve the refund as recommended by staff.

SPECIAL TAXES MATTERS, REFUNDS, CONSENT

With respect to the Special Taxes Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Runner voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board made the following orders:

CSAA Insurance Exchange, 817248 (STF)

01/01/12 to 12/31/12, \$363,295.00

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9

PROPERTY TAXES MATTER, CONSENT

With respect to the Property Taxes Matters, Consent Agenda, upon a single motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board made the following order:

Timber Yield Tax Claim for Refund

J.W. Bamford, Inc., 840852

01/01/11 to 12/31/13, \$52,760.62 Claim for Refund

Action: Approve the refund as recommended by staff.

Tuesday, September 23, 2014

LEGAL APPEALS MATTERS, ADJUDICATORY**Andrew Steven Roganson, 538417, 737457 (AC)**

06/08/06 to 12/31/08, \$6,328.42 Tax, \$0.00 Finality Penalty

Considered by the Board: June 25, 2014

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: The Board deferred consideration of the matter to the October 2014 Culver City meeting.

Jeffrey Scott Mankins, 467919, 760227 (FH)

04/01/06 to 03/14/07, \$24,610.73 Tax, \$2,229.20 Failure-to-File Penalties

Considered by the Board: Hearing Notice Sent – No Response

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Runner, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that no further adjustments will be made in the administrative protest and that the claim for refund be denied as recommended by the Appeals Division.

College Shell, LLC, 576308 (AR)

01/01/07 to 12/31/09, \$0.00 Tax

Considered by the Board: February 27, 2014

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Runner, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Y & S Enterprises, Inc., 492513 (EA)

10/01/04 to 12/31/07, \$218,091.86 Tax, \$28,269.11 Negligence Penalty

Considered by the Board: October 30, 2013

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Runner, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Anderson Audio Visual-East Bay, LLC, 511892 (CH)

04/01/05 to 03/31/08, \$0.00 Tax

Considered by the Board: October 25, 2012

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Runner, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition for rehearing be denied and approved adjustments as recommended by the Appeals Division.

Akop Jack Chichyan, Vicken Djeredjian, and Mnatsakan Mike Grigoryan, 388129 (STF)

01/01/00 to 02/28/02, \$2,815,668.00 Tax, \$703,917.00 Fraud Penalty, \$281,566.80 Failure-to-File Penalty

Considered by the Board: July 17, 2014, Summary Decision (Rev. & Tax. Code, § 40)

Tuesday, September 23, 2014

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Runner, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board adopted the written summary decision as presented by staff.

**CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS,
ADJUDICATORY**

Speaker: Todd Bentley, Taxpayer in the matter of *Todd Bentley and Kate Bentley*, 593582.

Daniel F. Dong, 734198

2011, \$1,885.00 Assessment

Considered by the Board: Hearing Notice Sent – No Response

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Mandel, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board adopted a decision sustaining the action of the Franchise Tax Board.

Ned Yamin and Haideh Yamin, 603221

2005, \$152,299.00 Tax, \$22,408.50 Late Filing Penalty

Considered by the Board: Hearing Notice Sent – No Response

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Mandel, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board adopted a decision sustaining the action of the Franchise Tax Board as modified by its concessions on appeal.

Alberto A. Delpino, 576143

2006, \$1,086.00 Assessment

Considered by the Board: July 17, 2014

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Mandel, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board adopted a decision sustaining the action of the Franchise Tax Board.

Todd Bentley and Kate Bentley, 593582

2004, \$132,041.00 Tax

2005, \$206,508.00 Tax

Considered by the Board: November 19, 2013

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Ms. Yee moved to deny the petition for rehearing. Ms. Mandel made a substitute motion to grant the petition for rehearing. The substitute motion was seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board adopted a decision granting the petition for rehearing.

Tuesday, September 23, 2014

SALES AND USE TAX MATTER, REDETERMINATION, ADJUDICATORY

Sony Electronics, Inc., 524880

07/01/98 to 12/31/04, \$13,405,378.32

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Runner voting yes, Ms. Mandel not participating, the Board approved the redetermination as recommended by staff.

SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, ADJUDICATORY

Sony Electronics, Inc., 825512

07/01/98 to 12/31/04, \$1,050,182.30 Claim for Refund

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Steel, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Runner voting yes, Ms. Mandel not participating, the Board approved the refund as recommended by staff.

TAX PROGRAM NONAPPEARANCE MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE**PROPERTY TAX MATTERS****Audits**

BCE Nexxia Corporation (8032)

2009, \$0.00 Escaped Assessment, \$0.00 Penalties, \$0.00 In-lieu Interest

2010, \$0.00 Escaped Assessment, \$0.00 Penalties, \$0.00 In-lieu Interest

2011, \$23,000.00 Escaped Assessment, \$2,300.00 Penalties, \$8,280.00 In-lieu Interest

2012, \$17,000.00 Escaped Assessment, \$1,700.00 Penalties, \$4,080.00 In-lieu Interest

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Runner voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the audit adjustments as recommended by staff.

AboveNet Communications, Inc. (7837)

2012, \$6,900,000.00 Escaped Assessment, \$690,000.00 Penalties, \$1,035,000.00 In-lieu Interest

2013, \$600,000.00 Excessive Assessment, \$0.00 Penalties, \$0.00 In-lieu Interest

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Runner voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the audit adjustments as recommended by staff.

Tuesday, September 23, 2014

Board Roll Changes

2011, 2012 and 2013 State-Assessed Property Rolls

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Mr. Runner voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board approved corrections to the 2011, 2012 and 2013 Board Rolls of State-Assessed Property as recommended by staff ([Exhibit 9.3](#)).

OFFER-IN-COMPROMISE RECOMMENDATIONS

Action: Upon motion of Mr. Runner, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved the Offer in Compromise Recommendations of *Audcon Group of Companies, Inc.*; *John A. Bart*; *Tye Allon Bayless*; *California Granite & Tile, Corp.*; *James David Frasco*; *Karanjit Singh Gill* and *Jasvir Kaur Gill*; *Valeri Ghazaryan*; *Richard Nolan Hill*; *King Capital, LLC*; *Jason Yoohwan Oh* and *Jane Yoon Oh*; *Rigoberto Pena*; *Laquetta Karen Perry*; *R & R Furniture Co., Inc.*; *William Warren Rader*; *Gary Beeman Rogers*; *SCB, LLC* and *Stephen Wolchuk*; *Nam Ky Ton*, and, *John Michael Villeneuve*; as recommended by staff.

LOCAL TAX REALLOCATION MATTERS

City of Fillmore, 626418

01/01/09 to Current, \$2,489,919.00 Tax

Considered by the Board: June 25, 2014, Summary Decision (Rev. & Tax. Code, § 40)

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Mr. Horton, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, Ms. Steel voting no, the Board adopted the written summary decision as presented by staff.

CHIEF COUNSEL MATTERS

RULEMAKING

Section 100 Changes

Cigarette and Tobacco Products Licensing Act Regulations 4604, *Penalties for Licensed or Unlicensed Wholesalers and Distributors*, and 4605, *Penalties for Licensed or Unlicensed Manufacturers and Importers*

Bradley Heller, Tax Counsel, Tax and Fee's Programs Division, Legal Department, made introductory remarks regarding staff's request for authorization to complete Section 100 changes to correct statutory references in Regulations 4604 and 4605 and to update a reference to a regulation in Regulation 4604 ([Exhibit 9.4](#))

Action: Upon motion of Mr. Runner, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved the Section 100 changes to Regulations 4604 and 4605 as recommended by staff.

Tuesday, September 23, 2014

ADMINISTRATIVE SESSION**ADMINISTRATIVE MATTERS, CONSENT**

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Ms. Mandel, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board made the following orders:

Action: Adopt the following resolutions, extending its sincere and grateful appreciation to the retirees for their dedicated service to the State Board of Equalization and to the State of California, their congratulations on each retiree's well-earned retirement, and best wishes to them and their families for continued success, happiness and good health in the years to come ([Exhibit 9.5](#)).

Christine Cardoza, Business Tax Administrator I, Sales and Use Tax Department,
San Jose District Office

Doris Y. Chiang, Supervising Tax Auditor III, Sales and Use Tax Department,
Van Nuys District Office

Roberta Cornell, Business Taxes Administrator II, Special Operations Branch,
Legal Department, Headquarters

Donna M. Corrigan, Staff Programmer Analyst, Technology Services
Department, Headquarters

Julio DeAnda, Business Service Officer II (Supervisor), Administration
Department's Supply Management Unit, Headquarters

Julie Elliot, Associate Information Systems Analyst, Technology Services
Department, Headquarters

Terry Elliot, Legal Secretary, Appeals Division, Legal Department, Headquarters

Diane L. Griffin, Information Systems Technician Supervisor I, Administration
Department's Data Entry Unit, Headquarters

Rick Guidera, Staff Services Manager II, Administration Department,
Headquarters

Marie Hernandez, Key Data Operator, Administration Department's Data Entry
Unit, Headquarters

Amy A. Hibbit, Executive Secretary I, Sales and Use Tax Department,
Sacramento Out-of-State Office

Wayne G. Hill, Tax Technician II, Sales and Use Tax Department, Culver City
District Office

Brian Ishimaru, Supervising Tax Auditor II, Property and Special Taxes
Department, Appeals and Data Analysis Branch, Headquarters

Steven C. Kamlin (Amended), Tax Auditor, San Diego District Office

Kevin Long, Senior Programmer Analyst (Specialist), Technology Services
Department, Headquarters

Cherie L. McCormick, Business Taxes Representative, Use Tax Administration
Section, Headquarters

Mark Peletta, Associate Information Systems Analyst, Technology Services
Department, Headquarters

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Charles Press, Business Taxes Specialist II, Computer Audit Specialist Section,
Santa Rosa District Office
Gregory Reynolds, Supervising Tax Auditor II, Irvine District Office
Kathleen Roberts, Associate Information Systems Analyst, Technology Services
Department, Headquarters

Action: Approve the Board Meeting Minutes of July 17, 2014 and August 5-6, 2014.

Action: Approve proposed revisions to Audit Manual, Chapter 3, *Audit Working Papers* ([Exhibit 9.6](#)).

Action: Approve proposed revision to Compliance Policy and Procedures Manual, Chapter 5, *Returns* ([Exhibit 9.7](#)).

Action: Adopt Property Tax Form, BOE-64-SES, *Initial Purchaser Claim for Solar Energy System New Construction Exclusion* ([Exhibit 9.8](#)).

OTHER ADMINISTRATIVE MATTERS

Executive Director's Report

Cynthia Bridges, Executive Director, provided a report on Fiscal Year 2013-14 Accomplishments ([Exhibit 9.9](#)).

Mr. Horton made complimentary remarks for the accomplishments made by the Board of Equalization for the Fiscal Year 2013-14.

Cynthia Bridges, Executive Director, presented the 2015 Board Workload Plan for approval. The plan consists of the 2015 Board meeting calendar, annual property tax calendars, and significant dates considered in setting Board meeting dates ([Exhibit 9.10](#)).

Action: Upon motion of Mr. Runner, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that March 24 be removed from the meeting dates and that the proposed 2015 Board Workload Plan otherwise be approved as presented by staff.

Eric Steen, CROS Project Director, provided a report regarding the progress on the CROS project to replace BOE's two current tax legacy technology systems.

The Board recessed at 4:41 p.m. and reconvened at 4:50 p.m. with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

Tuesday, September 23, 2014

Chief Counsel's Report

Randy Silva, Chief, Investigations and Special Operations Division, provided a status update on the Revenue Recovery and Collaborative Enforcement Act, and the Tax Recovery and Criminal Enforcement Team (Pilot Project). Gina Fong, Technical Advisor to the Tax Recovery and Criminal Enforcement Team (TRACE) provided a brief overview of the TRACE website.

Sales and Use Tax Deputy Director's Report

Jeff McGuire, Deputy Director, Sales and Use Tax Department, provided a report on the continuation of the current bulk sale exemption threshold of \$1,500 in Sales and Use Tax Regulation 1599, *Coins and Bullion* (Rev. & Tax. Code, §6355) for 2015 ([Exhibit 9.11](#)).

Property and Special Taxes Deputy Director's Report

Lynn Bartolo, Acting Deputy Director, Special Taxes, provided a report on the rate setting for calendar year 2015 Hazardous Substances Program Fees and the Occupational Lead Poisoning Prevention Fee ([Exhibit 9.12](#)).

ADOPTION OF BOARD COMMITTEE REPORTS AND APPROVAL OF COMMITTEE ACTIONS**Customer Services and Administrative Efficiency Committee**

Action: Upon motion of Mr. Runner, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved the Customer Services and Administrative Efficiency Committee report and the actions therein ([Exhibit 9.13](#)).

Business Taxes Committee

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved the Business Taxes Committee report and the actions therein ([Exhibit 9.14](#)).

**FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES
HEARINGS HELD SEPTEMBER 23, 2014**

Paula Trust, 759422

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and duly carried, Mr. Horton, Ms. Yee and Ms. Mandel voting yes, Ms. Steel and Mr. Runner voting no, the Board sustained the action of the Franchise Tax Board.

Tuesday, September 23, 2014

Denny L. Lira, 764604

Final Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD
SEPTEMBER 23, 2014**

Penryn Lumber Company, 554162 (KH)

Final Action: (Motion expunged.)

Upon motion of Mr. Runner, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that its previous motion be expunged.

The Board deferred consideration of the matter to the October 2014 Culver City meeting.

Robert Gage Lesnett Revocable Trust, 625811 (UT)

Final Action: Upon motion of Ms. Steel, seconded by Mr. Runner and duly carried, Ms. Steel, Mr. Runner and Ms. Mandel voting yes, Mr. Horton and Ms. Yee voting no, the Board ordered that the petition be granted.

**FINAL ACTION ON SPECIAL TAXES APPEALS HEARINGS HELD
SEPTEMBER 23, 2014**

Mox, Inc., 569235, (STF)

Mox, Inc., 570251 (SFT)

Final Action: Upon motion of Ms. Yee, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division. The Board directed staff to inform the taxpayer of the Offer in Compromise program.

ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 5:23 p.m. and reconvened immediately in closed session with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

CLOSED SESSION

The Board met to discuss pending litigation (Gov. Code § 11126(e)), settlements (Rev. & Tax. Code §§ 6901, 7093.5, 30459.1 and 50156.11) and personnel matters (Gov. Code § 11126(a)).

The Board recessed at 5:34 p.m. and reconvened immediately in open session with Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel present.

Tuesday, September 23, 2014

Mr. Horton announced the appointments of Mark Durham to the position of Chief, Research and Statistics Section, Legislative and Research Division, and Jill O'Connell to the position of Chief, Financial Management Division, Administration Department.

The Board adjourned at 5:36 p.m. in memory of Frank Gau, father of David Gau, Chief Deputy Director, Executive Office.

The foregoing minutes are adopted by the Board on December 18, 2014.

Note: The following matters were removed from the calendar prior to the meeting: *Ehud Yuhjtman and Dalia Yuhjtman, 772960; World Marketing Leader, Inc., 602909; James Eugene Goldstein, 442332; and Reynolds K. Ohai, 624635.*